

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WHITTIER CITY SCHOOL DISTRICT.

OAH CASE NO. 2010090497

ORDER DENYING MOTION FOR
STAY PUT

On September 22, 2010, Student filed a Motion for Stay Put. On September 27, 2010, District filed an Opposition to the Motion.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505, subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

If the parent of the child consents in writing to the receipt of special education and related services for the child but does not consent to all of the components of the IEP, those components of the program to which the parent has consented shall be implemented. (Ed.

Code, § 56346, subd. (e).) If the local educational agency (LEA) determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education (FAPE) to the child, the LEA shall initiate a due process hearing. (Ed. Code, § 56346, subd. (f).)

DISCUSSION

At an IEP meeting on July 9, 2008, District made the following offer of FAPE, and Parents consented: special day class (SDC) for the severely handicapped, preschool for four hours per day; speech and language therapy 40 minutes per week; physical therapy 50 minutes per week; and occupational therapy 50 minutes per week.

On or about October 9, 2008, Mother removed Student from the SDC.

Student was then enrolled in general education preschool classes at Washington School and Lincoln Preschool. Although located physically at District locations, these were not District placements, but were run by Head Start Preschool Programs (HSSP) operated by the State of California. HSSP rents space at Washington and Lincoln Schools as a private tenant, and acts independently of District.

During Student's placement there, an amendment IEP meeting was held on November 24, 2008. Mother declined the offer of FAPE that was made.

During Student's continued placement through HSSP, the next IEP meeting was held on October 2, 2009, and continued on January 15, 2010. In the January 15, 2010 IEP, District made the following offer of FAPE: SDC preschool five days per week for four hours per day at Washington School with 20 minutes per day mainstreaming in Head Start with one recess per week; occupational therapy one time per week for 50 minutes in the educational setting; physical therapy one time per week for 25 minute sessions in the educational setting for six months; and speech and language therapy two times per week for 20 minute sessions in a small group in the classroom setting.

By letter dated February 12, 2010, Mother partially consented only to the related services offered in the January 15, 2010 IEP, and not to the SDC placement. On March 5, 2010, District agreed to provide these related services.

Student's IEP team met again on April 20, 2010, and continued the meeting on June 10, 2010, to plan for Student's transition from preschool to kindergarten. District made the following offer of FAPE: SDC for the severely handicapped, K-2 for five days per week, 285 minutes per day, 1425 minutes per week; mainstreaming at daily recess and lunch activities at kindergarten 75 minutes per day; speech two times per week for 20 minute sessions in a small group; occupational therapy one time per week for 50 minute individual sessions in the school setting; physical therapy one time per week for 25 minute individual

sessions in the school setting; intensive instructional support, five days per week, six hours per day; and extended school year.

By letter dated June 21, 2010, Mother partially consented only to the related services offered in the April-June 2010 IEP, and not to the SDC placement, and indicated her intention to enroll Student in a District general education kindergarten classroom for the upcoming 2010-2011 school year. HSSP does not provide placements for kindergarten-age students.

On July 30, 2010, District denied Student enrollment in a District general education kindergarten classroom, and this dispute arose.

Student's Motion seeks enrollment in the general education kindergarten class. Student contends that placement in the general education classroom is the last agreed upon and implemented IEP, by virtue of District's tacit agreement to Student's placement in the general education HSSP classes at Lincoln and Washington Schools. Student also contends that District is estopped from disputing the appropriateness of general education for Student, because District did not file for due process to establish that the SDC was a necessary component of FAPE. District contends that the July 9, 2008, IEP offer of preschool SDC for the severely handicapped was the last agreed upon IEP. District contends that it has never offered Student a general education placement, and that the placement of Student at Washington and Lincoln Schools' HSSP programs were, essentially, private placements. This dispute only concerns the placement and not the related services, which both District and Student agree should be governed by the April-June 2010 IEP.

Here, because of changing circumstances, the status quo cannot be replicated exactly because HSSP does not provide a program for kindergarten-aged students. As far as placement is concerned, the IEP which was implemented prior to the dispute arising was the July 9, 2008, IEP offer of a preschool SDC for the severely handicapped. Progression to the kindergarten SDC maintains that status quo for purposes of stay put. Student has never been offered a general education placement through the District, thus the contention that stay-put placement should be in the general education District kindergarten class must fail. Student's Motion for Stay Put, seeking an order for enrollment in the District-operated general education kindergarten classroom, is therefore denied.

ORDER

Student's Motion for Stay Put is denied.

Dated: September 28, 2010

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings